THE HON'BLE SMT. JUSTICE T. MEENA KUMARI PAND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 16346 of 2006

Date 3-7-2007

Between:
The Director General of Police and others.

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PETITIONERS
AND

Government of Andhra Pradesh,
Agriculture & Cooperation (Horticulture) Department,
Secretariat, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.16346 of 2006

ORDER: (per Smt. T.Meena Kumari,J)

This writ petition is filed by the Department aggrieved by the order of the A.P Administrative Tribunal in O.A. No.3408 of 2006 dated 13.3.2006.

The brief facts of the case are that the respondent was working as Constable with the petitioner-Department. While so, the Department issued a charge memo on 25.3.1994 against the respondent alleging thus:

> "You are the Civil Police Constable bearing General No. 608 and worked at Pebbiar P.S. of Kothakoda Circle, Wanaparthy Sub-Division of Mahaboobnagar District from 14.6.93 till your suspension.
>
> On 25.3.94 at 11 p.m. yourself, P.Cs. 1107, Maibanna and 146 have appeared in Pebbair P.S. in intoxicated condition and picked up row with PC 1030 who was already present in the P.S. and abused HC 1097 in filthy language alleging that he and PCS 1030, 1335 alone were eating away the entire amount. HC 270, Sri M.A. Hameed hearing the abuses and nuisance created by you and PC 1107 and 146 tried to silence you but you all were adamant. Since you were alleging HCC 1097 of eating away entire amount, HCs 270 summoned him (HC 1097) to P.S. to calm you down. HC 1097 visited Pebbair P.S. at mid night (i.e. at 0030hrs.) and found PC 1107 in intoxication condition holding a rifle in his hand on sentry duty and sensing danger of holding rifle in intoxicated condition, HC 1097 withdrawn it from PC 1107 but on the instigation of you and PC 147, the PC 1107 questioned the

authority of HC 1097 and you all three i.e. PCs. 1107, 146 and yourself behaved with HC 1097 in a most indisciplined manner, pulled him, abused him and even man-handled him and torn his clothes (banian and shirt) and helped PC 1107 to forcibly snatch rifle and its ammunition from the hands of HC 1097. On your instigation only, the PC 1107 has gone to the extent of loading the rifle with rounds aimed at HC 1097 and fired with intent to kill him. It was his luck that he escaped unhurt due to timely intervention of HC 270 and PC 1030 who pushed the rifle, but the PC 1107 fired another round which also missed the target. On your instigation, PC 1107 has disconnected the P.S. telephone and prevented HC 1097 from disseminating information to superiors about the unfortunate incident in the P.S. through VHF set. There would have been definitely some deaths in the P.S. due to firing by PC 1107 with the service rifle on your instigation HC 270 would not have intervened and withdrawn weapon from PC 1107. For the above allegations yourself and PC 1107 were placed under suspension vide D.O. No. 531/94, dt.31.3.94 by the Superintendent of Police, Mahabubnagar.

Hence, the charge."

Thereafter, an enquiry officer was appointed to conduct enquiry into the matter and criminal proceedings were initiated against them. However, during the pendency of the departmental enquiry, when the respondent and the other two accused were convicted by the trial Court, they were dismissed from service. Aggrieved by the same, they preferred Crl.R.C. No. 1325 of 2000 before this Court and a learned single judge of this Court through judgment dated 17.12.2002 acquitted them of the charges levelled against them. Subsequently, the respondent herein and A3 were reinstated into service duly regulating the period from 30.6.1998 to 22.7.2003 as on duty.

So far as the departmental proceedings are concerned, the action against A1 was dropped since he expired on 10.11.2002. However, through the proceedings impugned in the O.A. dated 15.5.2004, the 2nd petitioner while dropping the proceedings against A3,

observed that the matter in respect of this respondent will be settled soon after completion of O.E. Aggrieved by the same, he filed the O.A. impugned in this writ petition before the Tribunal. The Tribunal, through the impugned order dated 13.3.2006 while allowing the O.A. filed by the respondent has set aside the proceedings initiating oral enquiry. Aggrieved by the same, the Department filed the present writ petition.

Learned Government Pleader for Services-I appearing on behalf of the department would contend that keeping in view the nature of the charge levelled against the respondent herein, the Tribunal ought not to have allowed the O.A. He further submits that there is no bar for initiation of oral enquiry after the conclusion of criminal proceedings and the Tribunal erred in setting aside those proceedings. Further, the Tribunal failed to consider the reprehensible conduct of the respondent herein, for which, departmental as well as criminal proceedings were initiated against him and even though the criminal proceedings ended in acquittal, the disciplinary proceedings in respect of this respondent are still pending. He, therefore, prayed that the writ petition be allowed and the Department may be permitted to continue the oral enquiry.

On the other hand, Sri V. Mallik, learned counsel for the respondent would contend that in view of the fact that the charge in respect of all the three accused being the same and in view of the fact that the disciplinary proceedings against the first accused were already dropped and the proceedings in respect of A3 were concluded by imposing minor punishment, the department would not have initiated oral enquiry in respect of this respondent alone. He further submits that

when the department had concluded the departmental proceedings in respect of A3 in the year 1994 itself, it ought to have continued the departmental proceedings in respect of this respondent also and completed the same. In support of this contention, he placed reliance upon the decision of the Supreme Court in STATE OF A.P. vs. RADHA KISHAN & OTHERS ([1]). He, therefore, submitted that the order of the Tribunal is legal and valid and it does not require any interference at the hands of this Court.

In the counter affidavit filed before the Tribunal, the Department stated that the respondent was dismissed from service along with other co-accused in pursuance of the order of conviction passed by the Asst. Sessions Judge Court, Wanaparthy. However, on a revision preferred against the said judgment, this Court has set aside the conviction and sentence recorded by the trial Court against the respondent and other accused and acquitted them of the charge levelled against them. Consequent to the order of acquittal passed by this court, the respondent and other accused were reinstated into service and the disciplinary action initiated so far as A1 was concerned was dropped as he expired during the pendency of the departmental proceedings; that against A3, the department inflicted minor punishment of postponement of increments for three years without effect on future increments. So far as the respondent herein is concerned, the department due to oversight issued the proceeding treating the period from 30.6.1998 to 22.7.2003 as on duty and when it found that the departmental enquiry is still pending

against the individual, it cancelled the orders issued earlier.

There is no dispute about the fact that the charges levelled against this respondent and the other accused are very serious in nature and in that connection, departmental as well as criminal proceedings were initiated against them in the year 1994 itself, but due to the pendency of the criminal proceedings, the department could not proceed with the disciplinary proceedings. However, when the criminal proceedings ended in acquittal, the Department reinstated the respondent and other accused into service. However, in view of the demise of Accused No.1, the proceedings against him were dropped and the proceedings so far as A3 are concerned, were concluded by imposing the punishment of postponement of increments for three years without effect on future increments. So far as the respondent herein is concerned, the department stated that in view of the pendency of O.A. filed by the respondent before the Tribunal, the oral enquiry as contemplated against him could not be completed and the same is still pending.

The Tribunal without taking these aspects into consideration, allowed the O.A. erroneously. In the circumstances, we are of the opinion that the Tribunal was not justified in setting aside the proceedings initiated against the respondent and it ought to have allowed the department to complete the enquiry initiated against him.

Taking into consideration the peculiar facts and circumstances of the case, we feel it appropriate to set aside the impugned order of the Tribunal and direct the department to conclude the oral enquiry initiated

against the respondent within a reasonable time. Accordingly, we set aside the impugned order of the Tribunal dated 13.3.2006 passed I O.A. No. 3408 of 2004 and direct the petitioner-department to complete the enquiry initiated against the respondent as expeditiously as possible, preferably, within a period of two months from the date of receipt of a copy of this order

The writ petition is accordingly disposed of.

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(T. MEENA KUMARI,J)

Date: 3rd July, 2007

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(G. CHANDRAIAH,J)

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[1] (1998) 4 SCC 154